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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,322	07/14/2000	KATSUHIKO HIRAMATSU	JEL31215	1555

7590 05/25/2005

STEVENS DAVIS MILLER & MOSHER  
1615 L STREET NW SUITE 850  
WASHINGTON, DC 20036

EXAMINER
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NGUYEN, LEE

ART UNIT	PAPER NUMBER
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2682

DATE MAILED: 05/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/600,322

**Applicant(s)**

HIRAMATSU ET AL.

**Examiner**

LEE NGUYEN

**Art Unit**

2682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 8-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This action is responsive to the communication filed 3/7/2005. Claims 8-12 remain in the prosecution.

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 8-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilhousen (US 6,034,635) in view of Sundelin et al. (US 6,144,861).

Regarding claims 8 and 10, Gilhousen teaches a base station apparatus for use in a CDMA radio communication system in which a communication apparatus normally communicates with one base station apparatus and communicates with a plurality of base station apparatuses during a diversity handover and in which each base station apparatus can individually detect a position of the communication terminal apparatus (col. 4, 30-39 and col. 8, 1-4), said base station apparatus comprising: inherently a notifier that notifies a control station apparatus of first information to the effect that the communication terminal apparatus is performing said diversity handover (Fig. 13, col. 19, lines 30-33; col. 21, lines 34-37; col. 26, line 18, col. 9, lines 56-58; Gilhousen teaches that the system controller and switch 10 includes interface and processing circuitry for providing system control to the cell sites. It is inherent that the base station 12 has a notifier that communicates with the control station 10, and informs the control station that it is performing a diversity handover, since more than one base station is needed to perform the

operation of diversity handover); Gilhousen also teaches that the power level of the mobile station may be gradually ramped up until such time as the second base station can successfully perform the timing measurement required by step 160 (fig. 1, 1A, which suggests that the mobile station receives power control command in order to ramp up power level). Gilhousen fails to explicitly teach that the receiver that receives second information provided from the control station apparatus to the effect that when said position detection is being performed during said diversity handover, a target quality is to be changed to a level provided from the control station; and a transmit power controller that changes the target quality according to the second information and perform transmit power control of the communication terminal apparatus at the changed target quality. In the same field of Gilhousen's invention (soft handover or diversity handover in CDMA system), Sundelin teaches that during the soft handover, the controller RNC involves in the target SIR update, the base station inherently receives the target update and transmits the target update to the mobile station for controlling the uplink power of the mobile station (col. 6, lines 59-64). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was

made to provide the teaching of Sundelin to the system of Gilhousen in order to enhance slow outer control loop. Gilhousen as modified by Sundelin inherently teaches enabling satisfactory performance of said position detection (see MPEP 2114).

Regarding claim 9, the claim is interpreted and rejected for the same reason as set forth in claim 8. The target quality changer and transmit power controller are also inherently included in the base station as indicated supra in the receiving of the target update and the transmission of the target update to the mobile station.

Regarding claim 12, the claim is interpreted and rejected for the same reason as set forth in claim 8.

4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gilhousen in view of Sundelin as applied to claim 8 above, and further in view of Dahlman et al. (US 6,173,162).

Regarding claim 11, Gilhousen as modified fails to teach that said target quality corresponds to an accuracy required for service. Dahlman

teaches that the target SIR corresponds to an accuracy required for service (col. 2, lines 32-35). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teaching of Dahlman to the system of Gilhousen in order to satisfy a particular connection of service type.

### ***Response to Arguments***

5. Applicant's arguments filed 03/07/2005 have been fully considered but they are not persuasive.

In the remarks, Applicant contends that Sundelin contains no disclosure relating to position detection and bears no relationship to Gilhousen and the present invention. Sundelin does not teach receiving second information, provided by a control station apparatus, to the effect that a target quality is to be to change to a level, provided by the control station apparatus, that enables position detection. Sundelin also does not teach changing the target quality information based on the second information. Gilhousen and Sundelin, thus relate to different technical fields, and one of ordinary skill in the art would not have considered the combination of Gilhousen's and Sundelin's teachings as being obvious. These applied references,

considered alone or together, do not disclose or suggest the present claimed subject matter invention.

In response, first, both Gilhousen and Sundelin teach power control in soft or diversity handover (Gilhousen, col. 10, line 58 through col. 11, line 3, and Sundelin, col. 6, lines 59-64). Therefore, Sundelin does have the relationship with Gilhousen. Second, regarding the functional limitation "position detection" concerns what it is, rather than what it does as recited in the claims. Furthermore, it is noticed that Gilhousen performs position detection during diversity handover by approaching power control command as stated, supra; and Sundelin involves power control also during diversity handover. Therefore, Sundelin inherently or at least, is capable of performing the functional position detection. Applicant has not shown in the claims how the position detection performs. Finally, Sundelin teaches that the RNC (the claimed control station apparatus) is involved in the target SIR (the claimed target quality) update when the mobile station is in soft handover (col. 6, 59-64). This target SIR update is inherently sent to the base station before it received by the mobile station in slow outer control loop. Consequently, the combination of Gilhousen and Sundelin does teach the claimed limitation.



***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEE NGUYEN whose telephone number is (571)-272-7854. The examiner can normally be reached on 8:00 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, VIVIAN CHIN can be reached on (703) -272-7848.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 5/17/05  
LEE NGUYEN  
Primary Examiner  
Art Unit 2682